

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 92 OF 2001.

Antonio Sebastiao Palha,
resident of Mercurim,
Agassaim, Ilhas, Goa.

.....

Petitioner.

Versus

1. Administrative Tribunal,
Coelho Pereira Bldg.,
Dr. Dada Vaidya Road,
Panaji, Goa.
2. Dy. Collector,
Goa North Division,
With Office at Panaji, Goa.
3. Mamlatdar of Tiswadi
Taluka, with office at
Panaji, Goa.
4. Mrs. Niquela Palha
(since deceased) through her
legal heirs :-

4(a) Inacio Pereira.

(b) Antonio Felix Pereira,
both residing at Mercurim Grande,
Confre Bhat, Agassaim, Ilhas, Goa.

© Mrs. Rusaria alias Rusai Pereira.

(d) Mr. Francisco alias John Fernandes,
both residing at Santa Cruz Bhand
Ilhas, Goa.

(e) Mrs. Fransquinha Pereira Pires.

(f) Mrs. Aleixo alias Alex Pires,
both residing at Cardozo Waddo,
Taligao, Goa.

.... Respondents.

Shri J.E. Coelho Pereira, Senior Advocate with Shri V. Korgaonkar, Advocate for the Petitioner.

Shri N.K. Sawaikar, Advocate for Original Respondent No.4.

CORAM: J. N. PATEL, J.

Date of Reserving the Judgment:- 6.11.2006.

Date of Pronouncing the Judgment:- 22.12.2006.

J U D G M E N T:

1. The petitioner has approached this Court seeking a writ of certiorari in order to quash and set aside the Judgment and Order dated 26.12.95 passed by the Deputy Collector and Sub-Divisional Officer, Panaji, Goa, thereby allowing the appeal of the respondent and the Judgment and Order dated 9.10.2000 passed by the Administrative Tribunal under which the revision application filed by the petitioner came to be dismissed and the appellate order was upheld.

2. The subject matter of the petition pertains to dispute of sharing tenancy rights between the petitioner and the respondent no.4 having a checkered history of litigation which can be summed up as under :-

The petitioner and the respondent are brother and sister. In the year 1972 respondent No.4 filed an application before the 3rd respondent under Section 8A of the Agricultural Tenancy Act seeking restraint against the petitioner from interfering with the alleged possession of the fourth respondent in respect of the

paddy field known as “Primeiro Lanco de Chamlar Grande” situated at Mercurim, Agassaim, Goa. The said application was registered as Tenancy Application No.135/72. The petitioner contested the said application and claimed that the said paddy field originally belonged to Comunidade of Gauncim and it was cultivated by the parents of the petitioner and the fourth respondent. That after the death of the petitioner's father in the year 1955 the said field was transferred in the name of the petitioner's mother. In the year 1961 or thereabout the said field was auctioned and as the mother of the petitioner was not in a position to participate in the auction as she was not keeping well, it was decided that the said field be purchased and cultivated in the name of respondent No.4 with the understanding that the said field would be for the benefit of the petitioner and the respondent and since then as a fact, the said field was cultivated by the petitioner and respondent No.4 i.e. northern half of the said field was cultivated by the petitioner and the southern half by the respondent No.4.

2.(i) It is the case of the petitioner that by Order dated 3.1.73 the third respondent was pleased to grant ex-parte interim relief in the said application No.135/72 restraining the petitioner from interfering with the alleged possession of respondent No.4 in respect of the said field. The petitioner challenged the said order in appeal before the respondent No.2.

2.(ii) The second respondent by his Order dated 8.3.73 was pleased to allow the appeal and vacate the ex-parte injunction. It appears that soon after the ex-

parte injunction passed by the third respondent was vacated by the order passed in appeal, the respondent No.3 in his capacity as Executive Magistrate initiated proceedings under Section 145. Cr.P.C. In the said proceedings the respondent ordered the petitioner not to interfere with the alleged possession of the respondent No.4. On 16.7.73 respondent No.4 filed an appeal against the order of the 2nd respondent before respondent No.1 and by Order dated 16.7.73 respondent No.1 was pleased to quash the Order of the 2nd respondent and restored the ex-parte injunction granted by respondent No.1 and therefore because of the interim order dated 3.1.73 passed by the 3rd respondent in Tenancy Application No.135/72 and the Order dated 3.7.73 passed under Section 145 of Cr.P.C. the petitioner was deprived of the possession in respect of the suit field. The 3rd respondent proceeded with the Tenancy Application No.135/72 and after hearing the parties was pleased to dismiss the application of respondent No.4 and inter alia held that the petitioner and the respondent No.4 are joint tenants in respect of the suit paddy field and that the petitioner is cultivating the northern half of the said field and that respondent No.4 is cultivating the southern half. Respondent No.4 challenged the said order before the 2nd respondent who by Order dated 10.5.76 dismissed the appeal filed by respondent No.4. Respondent No.4 carried the matter in revision before respondent No.1 and by Order dated 3.2.77, first respondent dismissed the revision petition filed by the respondent No.4 and the finding of respondent No.3 that the petitioner and respondent No.4 are joint tenants in respect of the said paddy field was upheld.

3. It is in the aforesaid facts and circumstances the petitioner was required to move an application before the Mamlatdar under Section 18 of the Agricultural Tenancy Act for recovery of possession of the northern half part of the said field of which possession was lost by the petitioner pursuant to the interim order passed by the third respondent. By order dated 10.11.77 the third respondent dismissed the application under S.18 of the Agricultural Tenancy Act inter alia holding that the possession of the northern half cannot be given to the petitioner. The petitioner therefore preferred an appeal before the 2nd respondent who allowed the appeal by Order dated 29.4.78 and held that the petitioner was entitled to claim possession of the northern half of the suit paddy field.

4. Aggrieved by this, the respondent No.4 filed a revision against the said order. In revision the first respondent held that the application of the petitioner under Section 18 was time barred. Therefore he allowed the revision application by his Order dated 15.2.79 which was challenged by the petitioner in this Court by preferring Writ Petition. On 1.9.83 the learned Single Judge of this Court dismissed the Writ Petition of the petitioner on the ground that the application under Section 18 filed by the petitioner was time barred. The matter was then taken up by the petitioner by preferring Letters Patent Appeal and a Division Bench of this Court by Order dated 16.8.84 allowed the Letters Patent Appeal and while doing so was pleased to set aside the Order of 1st, 2nd and 3rd respondents and remanded the matter back to the third respondent to dispose of the application under Section 18 on its merits as per directions contained in the said order. On the

matter being remanded to the third respondent, the application filed by the petitioner under S.18 of the said Act was inquired into which was objected to by respondent No.4 by filing application on 5.6.86 that the 3rd respondent i.e. the Mamlatdar has no jurisdiction to entertain the application filed by the petitioner under S.18. The 3rd respondent dismissed the application filed by the 4th respondent which order was confirmed by the 2nd respondent in appeal filed by respondent No.4 against the said order, inter alia holding that the Mamlatdar has jurisdiction to entertain the application filed by the petitioner under S.18 of the Agricultural Tenancy Act and therefore on 10.1.94 after conducting the inquiry and hearing the parties, was pleased to grant the application, inter alia holding that the possession of the northern half of the suit paddy field be restored to the petitioner.

5. The respondent No.4 preferred appeal before the 2nd respondent challenging the impugned order dated 19.1.94 passed by the 3rd respondent. This is how by Order dated 26.12.95 the 2nd respondent was pleased to allow the appeal of respondent No.4 and set aside the Order dated 10.1.94 passed by the 3rd respondent, against which the petitioner preferred revision before the 1st respondent which came to be dismissed and it was held that the 3rd respondent lacked inherent jurisdiction to deal with the initial Tenancy Case No.135/72 which was filed by respondent No.4 and that the provisions of Section 18 of the Agricultural Tenancy Act could not be invoked by the petitioner against respondent No.4. on the very grounds and for reasons contained in the said order.

6. Mr. Coelho Pereira, the learned Senior Counsel appearing for the petitioner submitted that in substance what the petitioner is seeking is restitution of the northern half of the paddy field of which he lost possession due to the ex-parte order obtained by respondent No.4 against him in Tenancy Application No.135/72 and the subsequent proceedings initiated under S.145 of Cr.P.C. by the 3rd respondent. It is submitted that after the proceedings initiated by respondent No.4 culminated into a finding that the authorities had no jurisdiction to entertain such an application, it was incumbent upon the authorities to restore the possession to the petitioner of the northern half portion of the paddy field which has been referred to as the suit property and that the petitioner was left with no choice but to seek restoration of his possession by filing an application under S.18 of the G.D.D. Agricultural Tenancy Act, 1964 before the Mamlatdar of Tiswadi Taluka, Panaji which came to be registered as TNC/ 35/77 and the Mamlatdar after taking into consideration the evidence led before him rightly came to the conclusion that the petitioner was entitled to be put back in possession of the northern half of the paddy field known as “Primeiro Lanco of Chamlor Grande” surveyed under No.62/2 situated at Mercurim and belonging to the Comunidade of Gauncim.

7. It is submitted that the evidence led by the parties in the proceedings clearly indicate that the petitioner's claim for tenancy in respect of the northern portion of the paddy field was upheld by the Mamlatdar in Tenancy Case No. TNC 135/72 which was filed by the opponent that is Respondent No.4 under S.8(A) of

the said Act. It is by virtue of the ex-parte temporary injunction that the said case and Chapter proceedings under Section 145 Cr.P.C. he was deprived of his possession of the suit paddy field. It is submitted that in view of the admitted fact situation the appellate authority as well as the revisional authority ought not to have interfered with the order passed by the Mamlatdar restoring the possession in favour of the petitioner and has placed reliance on the decision rendered by the Supreme Court in the case of ***Karnataka Rare Earth and another v. Senior Geologist, Department of Mines & Geology and another (2004) 2 SCC 783*** wherein the Supreme Court held as under :-

“ The doctrine of actus curiae neminem gravabit is not confined in its application only to such acts of the court which are erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if

the interim order of the court would not have been passed. The successful party can demand: (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost. ”

8. It is therefore submitted by Mr. Pereira, the learned Senior Advocate that the question whether the proceedings initiated by the respondent No.4 i.e. Case no. TNC 135/72 in which the claim of the petitioner was accepted as tenant of the northern half of the paddy field which has been upheld till the High Court is a finding which is binding on the parties and for the purpose of restitution the respondent No.4 cannot be heard in the matter to state that as the decision in the proceedings was without jurisdiction and therefore the petitioner should resort to appropriate civil proceedings to get his right determined by seeking a declaration rather than seeking restitution by moving an application under S.18 of the said Act, particularly when the respondent No.4 by virtue of an ex-parte order in the aforesaid proceedings ousted the petitioner by depriving him of the possession of the northern half of the paddy field of which he is admittedly a joint tenant and therefore the impugned order deserves to be quashed and set aside.

9. Per Contra, it is the contention of the learned counsel appearing for respondent No.4 that the appellate authority as well as the revisional authority were justified in holding that the provisions of S.18 of the said Act cannot be invoked by one tenant against the other tenant for recovery of possession and that the Mamlatdar has no jurisdiction to deal with such an application and therefore

the impugned order passed by the Mamlatdar restoring possession of the northern half of the paddy field cannot be sustained. Therefore the petition deserves to be dismissed.

10. The learned counsel cited the decision of the learned Single Judge of this Court which has been also relied upon by the revisional authority i.e. in the case of *Inacio Dias & Others v. Smt. Palmira Valadares [1995 (1) G.L.T. 97]* and therefore it is submitted that the petitioner will have to file appropriate civil proceedings to get his rights declared and then seek possession. Therefore there is no merit in the petition and it deserves to be dismissed.

11. The key issue which arises for determination in this petition is whether the petitioner is entitled for restitution.

12. The facts as enumerated above are not much disputed. It is the respondent No.4 who initially approached the Mamlatdar by initiating Tenancy Case No. 135/72 and obtained an ex-parte order by which the petitioner was restrained from entering the suit paddy field. The said ex-parte order was contested by the petitioner and came to be set aside. But in the meantime proceedings under S.145 of Cr.P.C. came to be initiated by the Mamlatdar and the petitioner was prevented from entering the paddy field. This itself goes to show that the petitioner was ousted and deprived of the possession of the paddy field which was in his cultivation pursuant to the ex-parte injunction obtained by

respondent No.4 and the interim order passed under S.145 of Cr.P.C. Normally ex-parte/ad interim injunction of such nature are passed with the object of preserving the subject matter of the litigation in status quo until the trial on merits and for the said purpose parties seeking such a relief need not establish his title to the right claimed in the proceedings but need only to make out a prima facie case i.e. serious question is required to be tried in the matter and that on the facts placed before the Court there is a probability of his being entitled to the relief asked for. The real point is how these questions ought to be decided at the hearing of the cause, but whether the nature and difficulty of the questions are such it was proper that the injunction should be granted until the time for deciding them should arrive and in a given fact situation of not granting such injunction would be to deprive the party forever the right claimed by him in the suit. Admittedly in the present case, but for the ex-parte injunction and the interim order passed in the proceedings initiated under S.145 Cr.P.C., the petitioner would have continued to cultivate the paddy field and it is well settled law that the party which has been put to disadvantageous position due to such ex-parte injunction in the present case, the petitioner having lost his possession over the northern half of the paddy field then it was obligatory on the part of the Mamlatdar while dismissing Tenancy case No. TNC 135/72 filed by respondent No.4 ought to have placed the parties in the position in which they formerly stood before the order of ex-parte injunction came to be passed. Unfortunately this has not been done. Even assuming that the Mamlatdar had no jurisdiction to entertain the tenancy case as ultimately held in the proceedings, it would have been equitable on his part to order restitution of

the possession of the northern half of the paddy field to the petitioner who was deprived of the same because of the order of ex-parte injunction passed by him. Nothing prevented the Mamlatdar from doing so and as no such orders came to be passed, therefore the petitioner was required to initiate fresh proceedings for the said purpose and did get an order to that effect which came to be set aside in appeal and confirmed in revision.

13. In the opinion of this Court the appellate as well as the revisional authority proceeded on a wrong premise that the Mamlatdar had no jurisdiction to entertain such an application when, in fact, he has passed an order only to restore the status quo ante between the parties. The primary object of restitution is restore status quo ante between the parties and the Court is therefore expected and is bound to “place the party in possession they would have occupied but for the ex-parte injunction and the interim orders passed in proceedings initiated under S.145 Cr.P.C.” in the proceedings which ultimately culminated in favour of the petitioner and against respondent No.4.

14. In the decision rendered by the Supreme Court in the case of *Kanchusthabam Satyanarayana and others v. Namuduri Atchutaramayya and others (2005) 11 SCC 109* the Supreme Court was required to deal with identical fact situation. The Supreme Court summed up its decision in paras 10 and 11 of the reported judgment, in which it observed as under :-

“ 10. Having heard the parties, we are satisfied that no interference by this Court in exercise of jurisdiction under Article 136 of the Constitution is called for. We cannot lose sight of the fact that the appellant himself invoked the jurisdiction of the authorities under the Andhra Pradesh Tenancy Act to seek eviction of the tenant. He succeeded before the original authority and in execution of the order obtained possession of the land, but lost before the Appellate Authority. The Appellate Authority directed restitution and therefore, an order was passed for putting the respondent in possession of the suit land pursuant to the Appellate Authority's order dismissing the application for eviction of the appellant. The appellant sought to challenge the orders by filing writ petitions before the High Court. Those writ petitions, and thereafter the writ appeals, were dismissed. It was only thereafter that the appellant filed a suit for permanent injunction for restraining the respondent tenant from interfering with his possession, which he had secured pursuant to an order of eviction, which was set aside in appeal.

11. In our view, it is not necessary for us to express any considered opinion on the question as to whether in view of the provisions of Section 18 of the Andhra Pradesh Tenancy act the suit before the District Munsif was maintainable. We shall assume in favour of the appellant for the purpose of these appeals that such a suit was maintainable though we express no considered opinion on that question. Assuming that such a suit was maintainable the question is whether the relief of permanent injunction by way of equitable relief ought to have been granted in favour of the appellant. We have earlier noticed

that the appellant himself had invoked the jurisdiction of the authorities under the Andhra Pradesh Tenancy Act seeking eviction of the respondent who was his tenant. Though the eviction application was allowed by the original authority and the appellant was put in possession of the suit land, on the respondent's appeal being allowed, an order was passed for restitution. It was at this stage that the appellant invoked the writ jurisdiction of the High Court to stay the proceedings, and when he failed before the High Court he filed a suit for injunction for restraining the respondent tenant from interfering with his possession of the suit land. In fact the suit for injunction was filed with a view to defeat the process of restitution which followed the Appellate Authority's order. It is now sought to be contended by the learned counsel for the appellant that the tenancy courts had no jurisdiction and therefore, the order of restitution also has no force. If we accept the contention of the appellant that the order passed by the tenancy courts at his instance was without jurisdiction and void then in equity the respondent should be put back in possession of the land in question so as to obtain status quo ante, because the appellant himself obtained possession of the land by executing the order of eviction passed under the Act at his instance. We are satisfied that equitable relief of the nature asked for in the suit in question should not have been granted in favour of the appellant so as to defeat the order of restitution passed by the Revenue Authorities under the Tenancy Act whose jurisdiction under the Tenancy Act was invoked by the appellant himself. The appellant cannot be permitted to retain possession by challenging the order as being without jurisdiction particularly when the jurisdiction was invoked by the appellant

himself, only because the ultimate order has gone against him. The grant of discretionary relief such as injunction being in the nature of equitable relief must be granted *inter alia* on considerations of equity and justice, and the appellant who is himself guilty of inequitable conduct cannot claim such relief. Therefore, we find that in the facts and circumstances of the case, assuming for the sake of argument that the civil court had jurisdiction to entertain the suit, and even going to the extent of assuming that the tenancy courts had no jurisdiction to entertain the eviction petition filed by the appellant himself, this was an appropriate case in which injunction ought not to have been granted. Having obtained an advantage by invoking the jurisdiction of the authorities under the Tenancy Act, the appellant cannot be allowed to retain that advantage by turning around and challenging the jurisdiction of the same authorities under the Tenancy Act. Even under the Code of Civil Procedure an order of restitution is stayed only in exceptional circumstances. We, therefore, concur with the view of the High Court and dismiss these appeals.”

15. Therefore, this Court quash and set aside the impugned Orders dated 26.12.1995 and 9.10.2000 and restore the Order passed by the Mamlatdar ordering restitution of possession of the northern half of the paddy field in favour of the petitioner. Rule is made absolute in the aforesaid terms.

J. N. PATEL, J.

sl.